



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Regulation 10 of the Tenancy Deposit
Schemes (Scotland) Regulations 2011**

Chamber Ref: FTS/HPC/PR/19/4075

Re: Property at Flat 3/1 21 Walker Street, Paisley, PA1 2EP (“the Property”)

Parties:

Ms Viktorija Prielgauskaite, c/o 7/3 Cyril Street, Paisley, PA1 1RW (“the Applicant”)

Mr John Kennedy, 27 Lanfine Road, Paisley, PA1 3NJ (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member) and Frances Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent(s) for payment of the undernoted sum to the Applicant(s):

Sum of SEVEN HUNDRED POUNDS (£700) STERLING

- Background
- 1. An application was submitted to the Tribunal under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). Said application sought an order be made against the Respondent on the basis that the Respondent had failed to comply with his duties to lodge a deposit in a tenancy deposit scheme within 30 days of the start of the tenancy in terms of Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”).

- The Hearing
2. A Hearing took place on 5 August 2020 by way of tele-conference. Both parties were personally present. The Applicant was represented by Mr Montgomery of Renfrewshire Citizens Advice Bureau. Ms Nicola Caldwell was also present, being the joint owner of the property in question. A Case Management Discussion ("CMD") had previously taken place on 20 February 2020 where again both parties had been personally present. At the CMD the Respondent had indicated that he wished to defend the application. He accepted that he had failed to lodge the deposit into a scheme but wished to lead evidence with regard to how the deposit had been paid, and the position of the Applicant's joint tenant. Further, the Respondent wished to lead evidence regarding damage caused to the property, notwithstanding it had been pointed out to him by the Tribunal that this may well be considered irrelevant to the application before the Tribunal. A Hearing was accordingly fixed.
 3. The Applicant sought an order from the Tribunal firstly for repayment of the deposit which had not been repaid in the sum of £350, and secondly an order for "compensation" (as referred to by the Applicant's representative) on the basis that the Respondent had failed to comply with their duties to lodge a deposit in a tenancy deposit scheme within 30 days of the start of the tenancy in terms of Regulation 3 of the 2011 Regulations. No specific sum of award was put forward by the Applicant's representative and he indicated he would leave this to the discretion of the Tribunal.
 4. It became apparent during the course of the proceedings that both parties had lodged productions which had not been crossed over to the other side by the Tribunal administration. Accordingly, the Hearing was adjourned for this to be done and to give parties an opportunity to consider same. Both parties confirmed following said adjournment that they had considered the documents and wished to proceed, and did not wish to have a further rescheduled hearing.
 5. The Applicant submitted that they had entered into a tenancy with the Respondent which commenced 18 July 2017. A copy of the tenancy agreement was lodged with the application. The Applicant paid a £350 deposit to the Respondent. It was submitted that a payment of £525 was made to the Respondent at that time which represented the £350 deposit and £175 as half share of a month's rent. The Applicant vacated the property on 1 November 2019. The Applicant was a joint tenant, alongside Charlotte Carrico. It was agreed between the tenants that all of the payments due to the landlord would come out of the Applicant's bank account to be paid over to the landlord, rather than each joint tenant paying the landlord separately any agreed share of same. Following the Applicant removing from the property, the deposit was not returned. The Respondent indicated to the tenant that he had failed to lodge same with a tenancy deposit scheme provider, and that due to alleged damage caused by the tenants, only part of the deposit would be returned to them. Any proposed deductions were disputed by the Applicant as being necessary. At the time of the Hearing, nothing had been paid back to the tenants.

6. The Respondent accepted that a deposit in the sum of £350 had been taken. He submitted that this was paid in two instalments of £175. He confirmed that both payments came from the Applicant's bank account. However, he submitted that one payment was due by the Applicant and the other payment was due by the joint tenant, Miss Carrico. Accordingly, the Respondent's position was that the Applicant was not entitled to seek return of the full £350 nor was she entitled to seek redress on the basis of the £350 having not been lodged in a scheme, as she only had entitlement to the sum of £175 being her one half share thereof. The Respondent submitted that he had received a payment of £525 from the Applicant at the start of the tenant agreement but disputed the breakdown as proposed by the Applicant. The Respondent submitted that this covered the full rent of £350 plus one half of the deposit being £175. The further payment of £175 was paid separately, again from the Applicant's bank account.
7. The Respondent also submitted that damage had been caused to the property by the tenants (reference was made to damage caused by hair dye on carpets and cat scratch damage to a sofa) and therefore deductions required to be made to cover his losses in this regard. Further, the Respondent submitted that he had asked for the Applicant's bank details in order that he could send the partial refund of deposit but these had not been provided therefore he had been prevented from repaying this by the Applicant's own actions.
8. The Respondent submitted that he and Ms Caldwell had purchased three properties at the same time, in February 2017. Two of them had sitting tenants (one of which is the property in question), and one was empty. He had no prior knowledge of renting out property and was not familiar with the Regulations. Shortly after receiving the deposit he had a house fire which resulted in him and his partner having to move into the empty property for 9 months. He also went to work off-shore shortly after that. Due to these issues, he forgot to lodge the deposits in a tenancy deposit scheme and it was only at the end of the tenancy when he contacted Safe Deposits Scotland to deal with the deposit reclaim, he realised that he had failed to lodge the deposit with them. He submitted that it was a genuine error and there was no intentional disregard for the rules.
9. The Applicant's representative had lodged a mandate of authority from the joint tenant, Miss Carrico, dated 8 March 2020 and a letter from Miss Carrico dated 5 March 2020 and which stated as follows:

"My name is Charlotte Jacqueline Carrico and I rented a property at 3/1 21 Walker Street Paisley from 1.07.17 to 31.10.2019. I shared the cost of the deposit with my flatmate Viktorija Prielgauskaite. I paid her my half of the deposit (£350) and the deposit was paid out of her bank account. All financial transactions for the property, namely the rent and deposit were paid from her account and I would pay her my share. The same situation remains with the deposit dispute. I am content for Viktorija to proceed and she will provide my half to me upon conclusion of the issue."

10. The Respondent suggested that this letter may have been fabricated by the Applicant's representative due to it not being signed and it having been dated prior to the date on the mandate of authority lodged. Further, the Respondent suggested that if the Applicant was attempting to obtain payment of the £350 deposit when he held the belief that she had only paid half of it in the first place, then she was "stealing" from Miss Carrico. It was also suggested by Ms Caldwell that this letter from Ms Carrico appeared to be a further application from the joint tenant seeking a claim under the 2011 Regulations, and which should not be allowed as this was out-with the timescale for lodging same under the 2011 Regulations. In response to this particular point, the Tribunal made it clear that no valid application had been made to the Tribunal under Rule 103 of the Rules and accordingly no such application was being considered as having been made by Miss Carrico. The Application being considered was a claim by the Applicant against the Respondent under Rule 103 of the Rules and Miss Carrico was not a party to same.

- Findings in Fact

11. The Tribunal made the following findings in fact:

- (a) The parties entered into a short assured tenancy which commenced 1 July 2017;
- (b) Clause 2 states: *"Tenant Name(s): "Charlotte Carrico, Viktorija Prielgauskaite"*
- (c) Clause 2 states: *"where the Tenant consists of more than one person, they will all have joint and several liability under this agreement (this means that they will each be liable for all sums due under this agreement, not just liable for a proportionate part.)"*
- (d) Clause 6 states: *"The Tenant also agrees to pay to the Landlord in the signature of this Agreement a deposit (the Deposit) of £350.00."*
- (e) A deposit of £350 was paid to the Respondent. Said sum was paid in two instalments of £175, both from the Applicant's bank account;
- (f) The Respondent failed to lodge the deposit of £350 into an approved tenancy deposit scheme under Regulation 3 of the 2011 Regulations;
- (g) The Respondent failed to provide the statutory information to the Applicant under Regulation 42 of the Regulations;
- (h) The Deposit had not been returned to the Applicant.

- Findings in Law

12. The Tribunal made the following findings in law:

12.1 The Respondent was in breach of their duties under Regulation 3 of the 2011 Regulations, which states as follows:

3 (1) *A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy—*

- (a) pay the deposit to the scheme administrator of an approved scheme; and*
- (b) provide the tenant with the information required under regulation 42.*

(2) *The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.*

(3) *A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—*

- (a) in respect of which the landlord is a relevant person; and*
- (b) by virtue of which a house is occupied by an unconnected person, unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.*

(4) *In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.*

12.2 The Respondent was in breach of their duties under Regulation 42 of the 2011 Regulations, which states as follows:

42.—(1) *The landlord must provide the tenant with the information in paragraph (2) within the timescales specified in paragraph (3).*

(2) *The information is—*

(a) confirmation of the amount of the tenancy deposit paid by the tenant and the date on which it was received by the landlord;

(b) the date on which the tenancy deposit was paid to the scheme administrator;

(c) the address of the property to which the tenancy deposit relates;

(d) a statement that the landlord is, or has applied to be, entered on the register maintained by the local authority under section 82 (registers) of the 2004 Act;

(e) the name and contact details of the scheme administrator of the tenancy deposit scheme to which the tenancy deposit was paid; and

(f) the circumstances in which all or part of the tenancy deposit may be retained at the end of the tenancy, with reference to the terms of the tenancy agreement.

(3) The information in paragraph (2) must be provided—

(a) where the tenancy deposit is paid in compliance with regulation 3(1), within the timescale set out in that regulation; or

(b) in any other case, within 30 working days of payment of the deposit to the tenancy deposit scheme.

12.3 The Tribunal must grant an order in terms of Regulation 10 which states as follows:

10. If satisfied that the landlord did not comply with any duty in regulation 3 the sheriff—

(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and

(b) may, as the sheriff considers appropriate in the circumstances of the application, order the landlord to—

(i) pay the tenancy deposit to an approved scheme; or

(ii) provide the tenant with the information required under regulation 42.

- Reasons for Decision

13. The Tribunal was satisfied that the Respondent was in breach of their duties under Regulations 3 and 42 as aforesaid. This was by the Respondent's own admission.

14. The 2011 Regulations were introduced to provide security for tenants in paying over deposits to landlords and to address an issue with some landlords taking tenancy deposits and then failing to pay them back where they were lawfully due at the end of the tenancy. The 2011 Regulations also provide that parties have access to an independent and impartial dispute resolution mechanism within a scheme to address any deposit deductions which require to be considered.

15. By their failure to lodge the deposit into an approved tenancy deposit scheme the deposit was not protected for the entire duration of the tenancy.

16. The Tribunal noted that the Respondent was aware of his obligation to lodge the deposit in terms of the 2011 Regulations. The Tribunal was satisfied that the failure to lodge the deposit was not an intentional act. The Tribunal also noted that the Respondent had purchased 3 properties at the same time with the intention of creating a property rental portfolio, and at the time of the Hearing had added a fourth property to that portfolio. Therefore, the Respondent had a responsibility to ensure that he obtained adequate advice as to his duties and obligations as a landlord, from the point of becoming a landlord. The Tribunal noted that his explanation for failure to lodge centred on the fact that he had suffered a house fire at the time, and had to go to work off-shore thereafter and due to stress in his life at the time, this was an error on his part, and one which he admitted from the start.
17. The Tribunal did not consider it reasonable that the deposit had been withheld and not returned to the tenant. The Respondent's allegations of damage caused to the property at the end of the tenancy were considered by the Tribunal to be irrelevant. By his failure to lodge the deposit with a scheme, he had deprived himself and the tenant of access to a free and impartial scheme arbitration service to determine whether or not the landlord was entitled to withhold said deposit. Whilst the Respondent stated that he had offered to repay part of the deposit and the tenant had refused to provide her bank details, the Tribunal did not consider this to be a mitigating factor. The Landlord had refused to return the full deposit, and clearly was still refusing to do so.
18. The Tribunal was satisfied that the Applicant was entitled to raise the Application with reference to the deposit of £350 having been paid. The tenancy agreement is quite clear that the joint tenants were jointly and severally liable under the terms of the tenancy. This includes payment of the Deposit which is defined in the tenancy agreement as being the sum of £350 at Clause 6. Either tenant could raise an application under Rule 103 of the Rules seeking an Order. It is entirely up to the joint tenants to agree privately whether they intend to repay any award back to the other, and they may have a personal claim against the other if that payment is not made. That is a matter for the joint tenants, and not for the Tribunal nor the Respondents. It was also noted that Miss Carrico had instructed CAB to lodge a letter on her behalf confirming that she was satisfied with the Applicant raising the application as she had, and that she would repay one half of any award made to her. The Tribunal noted that the letter by Miss Carrico was unsigned, but did not consider that to be an issue. The Tribunal were satisfied that CAB had lodged a mandate by Miss Carrico and were acting with due authority and the Tribunal had no evidence before it to be satisfied that such a letter had been fabricated in any way. Furthermore, regardless of whether the letter had been lodged or not, the Tribunal was satisfied that the Applicant was entitled to raise an application for an order under Rule 103 of the Rules in her own right on the basis of the Deposit of £350 having been paid under the terms of the lease. It was clear that the Respondent did not fully understand the concept of joint and several liability under his own lease, nor that the "Deposit" as defined in the agreement between the parties was in the sum of £350. Whatever personal agreement was made between the joint tenants as to how the deposit was to be paid by them was entirely private to them.

19. The Tribunal did not consider it competent to make an Order for repayment of the Deposit, as had been firstly sought by the Applicant. The Tribunal considered that the only order that it could make under a Rule 103 application was in terms of Regulation 10 of the 2011 Regulations. If the Applicant wishes to seek repayment of the Deposit separately alongside an award under Regulation 10 of the 2011 Regulations, she would have to raise a separate application for civil proceedings in that regard. Accordingly, the motion by the Applicant for an order for repayment of the deposit of £350 was refused.

20. As the Respondent had admitted his breach of the Regulations and in particular, Regulation 3, the Tribunal must grant an order. The Tribunal was not satisfied that it would be appropriate to grant an Order under Regulation 10 at the highest point in the scale, being three times the amount of the deposit. Taking into account the evidence before it, the Tribunal was satisfied that an Order should be granted in the sum of £700, under regulation 10 of the 2011 Regulations.

- Decision

21. The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent(s) for payment to the Applicant in the undernoted sum:

SEVEN HUNDRED POUNDS (£700) STERLING

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Legal Member/Chair

5 August 2020
Date

